
(2018) 04 JH CK 0107
In the Jharkhand High Court
Case No : W.P. (S) No. 5795 of 2007

NARAD PRASAD TIWARY

APPELLANT

Vs

STATE OF JHARKHAND

RESPONDENT

Date of Decision : 17-04-2018

Acts Referred:

Citation : (2018) 04 JH CK 0107

Hon'ble Judges : Pramath Patnaik, J

Bench : Single Bench

Advocate : Saurabh Shekhar, Rishi Raj Verma, Chandra Prabha, Rohit, Vishal Kumar Rai,

Final Decision : Disposed Off

Judgement

Pramath Patnaik, J

1. Since in the aforementioned writ applications the reliefs sought for are similar, with the consent of the respective counsels therefore, the matters

have been heard analogously and are being disposed of by this common order.Â

2. In the accompanied writ applications, the petitioners apart from challenging the conditions pertaining to direction to the petitioners to obtain the

requisite qualification within a period of four years from the date of absorption, have prayed for a direction commanding upon the respondents for

absorption in services without any conditions at par with similarly situated persons.Â Â

3. The brief facts leading to filing of the writ petition in W.P. (S) No.5795 of 2007 are that the petitioner was appointed in pursuance to the

Advertisement published in the daily News Paper 'The Indian Nation', against the duly sanctioned post of lecturer of English at B.S.K. College,

Bindudham, Sidhu Kanhu College, Barharwa under the erstwhile Bhagalpur university and after bifurcation of the State of Bihar, the said College falls

under the jurisdiction of S.K.M. University, Dumka. It has been averred that the Bihar College Service Commission relaxed the requisite qualification

as Second class master degree at least with 45 per cent in the relevant subject and accordingly, temporary and permanent concurrence was given

through its letter dated 12.02.1984 and the letter dated 22.03.1986. In the light of the statute of 28.02.1982, the Commission accorded him permanent

concurrence. In view of the decision of the erstwhile State of Bihar to make all affiliated College, as constituent college and decision was taken to

look into the matter with respect to the illegal appointment and further for termination with effect from 30.04.1996. Against the order of termination,

batch of writ petitions were filed before the Hon'ble Patna High Court and the aforesaid batch of writ petitions has been disposed of restraining the

respondents from terminating the services of the lecturers and against the said decision, matter went up to the Hon'ble Supreme Court in Civil Appeal

No. 6098 of 1997. In order to decide the issue, the Hon'ble Apex Court constituted One Man Committee, under the chairmanship of Hon'ble Mr.

Justice S.C. Agarwal and Justice S.C. Agarwal Commission submitted a report, which has been accepted by the Hon'ble Apex Court in its entirety.

The case of the petitioners have been discussed in the said report. Due to nonregularization of the services, the petitioner moved before this Court in

C.W.J.C. No. 8013 of 2000, which was disposed of on 13.06.2003 in the light of the orderÂ passed in the case of Shiv Kumar Prasad-versus-State of

Jharkhand reported in 2003 (2) JLR 190 vide Annexure-8 to the writ application vide Notification no. 68 of 2005, dated 10.09.2005 (Annexure-6), the

petitioner's services was absorbed conditionally and purely on temporary basis with a rider that if he fails to qualify within a period of four years from

the date of absorption, he shall be terminated from the services of the University. Being aggrieved by the aforesaid order, the petitioner has

approached this Court under Article 226 of the Constitution of India for redressal of his grievances.Â Â

4. In W.P. (S) No. 5944 of 2007, the petitioner was initially appointed as Lecturer, Labour and Social Welfare (LSW) in BSK College, Barharwa, in

the district of Sahibganj in pursuance to the Advertisement published in daily newspaper, 'The Indian Nation' and the said College was affiliated to the

Sidhu Kanhu University and became a constituent College pursuant to the sanction letter dated 19.08.1986 of the erstwhile State of Bihar. It has been further averred that as per the Statute of the University, as approved by the Chancellor vide letter dated 29.01.1986, which relates to regularization of the services of purely temporary lecturers appointed on or before 28.02.1982, the requisite qualification for appointment on the post of lecturers in a College was only Second Class Master Degree in the subject as per Annexure-1 to the writ application and the College of the petitioner was converted into a constituent College of the Bhagalpur University with effect from January, 23, 1987 and after bifurcation of the erstwhile State of Bihar, the said College falls under the jurisdiction of the Sidhu Kanhu University. In the Justice S.C. Agarwal's Commission's Report, the name of the petitioner appeared and since the case of the petitioner was not regularized, the petitioner submitted his representation on 07.12.2004 by giving full details of facts but by virtue of the impugned Notification No. 68 of 2005, dated 10.09.2005, though the petitioner's services have been absorbed but with a rider for acquiring qualification. Being aggrieved by the said rider, the petitioner submitted representation on 09.11.2006 vide Annexure-8. Left with no other alternative and efficacious remedy, the petitioner has been constrained to approach this Court under Article 226 of the Constitution of India for mitigating his grievances.Â

5. Learned counsel for the petitioner during course of hearing, has referred to I.A. No. 2726 of 2009, filed in W.P. (S) No. 5795 of 2007, wherein, it has been submitted that since the petitioner is coming under the purview of the Statute dated 29.01.1986, effective with retrospective effect from 28th February, 1982 and because the petitioner was appointed prior to the cut off date i.e. on 05.11.1979, as such, the said Statute is applicable to the petitioner and the statute of the year 1978 will not be applicable since the said Statute relates to temporary lecturers working since 1977 and also the statute of 1980 will not be applicable, since the same will be applicable to the lecturers appointed on or before January, 1979. It has been contended by the learned counsel for the petitioner that in view of the statute of the year 1982, the petitioner is possessing the requisite qualification of Second Class Master Degree in the Subject and the copy of the statute has been annexed as Annexure-9 to the said Interlocutory application. Learned counsel has

also cited the cases of similarly situated temporary lecturers, those who have been absorbed in regular service vide Notification dated 23.10.2008 vide

Annexure-10 to the said Interlocutory application. Learned counsel for the petitioner has also referred to I.A. No. 3855 of 2009, wherein, the

petitioner has been served with notice dated 25.11.2009, which has been issued in pursuance to the Notification No. 68 of 2005, dated 10.09.2005, as

Annexure-11 to the said Interlocutory application and during pendency of the writ application, the petitioner in W.P. (S) No. 5795 of 2007 has retired

on attaining the age of superannuation in the year 2009. Learned counsel has strenuously urged that the action of the respondents smacks of arbitrary

exercise of power because the respondents have deliberately mis-applied the judgment of the Hon'ble Apex Court rendered in Civil Appeal No. 6098

of 1997. Learned counsel further submits that the condition, as has been enshrined in the impugned Notification No. 68 of 2005, dated 10.09.2005, is in

contradiction to the corresponding statute of 1982.Â

6. Repudiating the contentions made in the writ application, a supplementary counter affidavit has been filed by the respondent nos. 4 and 5, wherein, it

has been submitted that the case of the petitioners are not similar to those persons, who have been absorbed under statute dated 29.01.1986 vide

Notification No. 152 of 2008 (Annexure-9) and Notification No. 153 of 2008 (Annexure-10) for the following reasons: -

(i) There is adverse finding of Hon'ble Justice S.C. Agarwal Commission with respect to the petitioner. Whereas there is no such finding in case of

the persons who have been absorbed under statute dated 29.01.1986 vide notification no. 152/2008 and notification no.153/2008 (Annexure-10).Â

(ii) There is specific finding by the commission that, â??on the date of appointment he did not have a consistently good academic record in as much as

he had not obtained an aggregate of 50 % marks in two previous examination as required under the 1978 statutes, which were applicableâ??.Â Â

(iii) That after taking into consideration the case of the petitioner the Hon'ble Justice S.C. Agarwal Commission did not find the petitioner eligible to be

considered for absorption and thus his name was not included in list of Annexure-IV-A of the Report of Hon'ble Commission i.e. 'Teaching Staffs

who are eligible to be considered for absorption' (Annexure-3 Pg. 67 of the Writ Petition).

(iv) That once the Hon'ble Commission found that statute of 1978 is applicable to the petitioner and whereby the petitioner was found not having

requisite qualification for appointment on the post of lecturer and was further not found eligible to be considered for absorption there arises no question

of absorbing the petitioner under statute dated 29.01.1986 ignoring the findings of the said commission.Â

7. During course of hearing, it has been stated at the bar that in pursuance to the order dated 01.05.2017, passed in W.P. (S) No. 3375 of 2016 and

batch of cases, Dukhu Ram Kuiry-versus-State of Jharkhand & Others, a Committee has been constituted and certain guidelines have been

formulated to look into the grievances of the individual claimants.

8. In the interest of justice, it would be apposite to dispose of the writ applications [W.P. (S) No. 5795 of 2007 with W.P. (S) No. 5944 of 2007] with

liberty to the petitioners to approach the University with all necessary and relevant documents within a period of four weeks from the date of

receipt/production of a copy of the order, so as to enable the University to transmit the said records before the Committee, as has been constituted by

the State Government and the decision be taken by the Committee within a period of six months and the decision so taken thereafter be communicated

to the petitioner.Â Â

9. With the aforesaid direction, the aforementioned writ applications [W.P. (S) Nos. 5795 with 5944 of 2007] stand disposed of.Â

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